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Postmodernism

Contributors: Shaun McVeigh

Editors: David S. Clark

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One might consider postmodernism, as a genre and topic, as part of a long and diffuse set of polemics in the West concerning both the status of the modern and of the attributes of the Enlightenment. Where questions of the modern and modernism were pitched, in the name of reason, against nature, religion, the ancients, and superstition, those of the postmodern and postmodernity have focused on the meaning and value of the modern and modernity. Postmodernism in the past forty years has launched polemics against the conformist ethics and aesthetics of modernist styles of architecture and cultural practice, as well as social, political, and legal thought. It is associated with the flamboyant denunciation of Western rationality and representation, attempts to outflank and redefine the authority of culture and law, and the proliferation of new styles of argument and forms of life to suit our times.

What brings out the family resemblances in these polemics is the questioning of relations of temporality. If the time of the modern is the present, then that of postmodern is out of joint. The postmodern does not so much come after the modern but arrives as torsion of the modern. Postmodernism has had a lasting if equivocal effect on legal thought. For some, postmodernism has addressed the most pressing questions of reason, law, and justice; for others it stands accused of promoting a pessimism that is unable to speak out against power or a hedonism that celebrates minor differences of consumption and choice.

Jean-François Lyotard

Jean-François Lyotard's (1924–1998) *The Postmodern Condition* (1984) has provided an influential discussion of relations between the modern and the postmodern. For Lyotard, there are two entries into questions about the postmodern condition. One is representable and programmatic and considers the cultural and institutional creation and understanding of knowledge. The other is idiomatic and unrepresentable; it attempts to do justice to the singularity of the event.

For Lyotard, postmodernism concerned with the representable can be approached both as a question of legitimacy and of knowledge. Postmodernism begins with the loss of a sense of authority and a pervasive incredulity toward the grand narratives of

modernity. The modern narratives of political emancipation (such as the freedom of the human subject), the claims of science and philosophy to explain and order the world, the inevitability of the progress of wealth and welfare, and the power of the rule of law to produce justice have all lost their force.

One can view this incredulity or loss of faith as both anti-authoritarianism and skeptical. The centuries for formation of the modern sovereign state in the name of the rights of man, security, and the rule of law were also the centuries of the mass destruction of security and law through colonialism and economic exploitation. The century of the universal declarations of human rights was also the one of mass destruction of humanity. Faced with what has been done in the name of the universal and universalizing reason, postmodernists have treated reason as part of the problem, and not as the solution. Critics of postmodernist thought, such as Jürgen Habermas, have viewed such claims [p. 1159 ↓] simply as a loss of courage and faith in the intellectual and political project of the Enlightenment.

Lyotard also addressed the loss of faith in grand narratives in terms of the changing conditions of the production of knowledge. The claims to justice, order, and reason staked out by modern political and legal thought no longer have much purchase on the fields of knowledge in which they are supposed to operate. For example, modern constitutional thought depends on the sovereign unity of the constitution to develop its account of the just society. Lyotard suggests (as does Habermas) that the “science of government” developed in the eighteenth and nineteenth centuries has undermined this constitutional promise of rational enlightenment. The use of aggregative sciences based on the virtual knowledge of probability has changed the means and objects of government.

Government and adjudication in law no longer proceed according to a principle of limited unity marked by distinctions between state and civil society, the public and private sphere, and rational adjudication. Instead, regulation proceeds through systems of simulation according to a juridical monitoring of a virtual, statistical, social reality. The sovereign no longer legislates justice, but is involved in an endless interpretation and management of probability and the processes of aggregating equivalence. For Jean Baudrillard (1929–2007), the contemporary technologies of sign systems have overcome the real by destroying the modern orders of representation through the

endless simulation of the mediascape. What is lost in this process, he claimed, is the time (and place) of law and justice.

Responses to the Postmodern Argument

There have been varied responses to such diagnoses of the postmodern condition. For some, it has required developing new strategies to resist both technological rationalism and irrational activism. For Habermas, the defense of the Enlightenment project required the restoration of the reality of the modern life world. Postmodernists have followed two, not unrelated, strategies to engage postmodernity. One is a series of heterological and frequently antilegal paths through which to sustain the temporal complexities of the event. The other is a pragmatism that proceeds without reference to the grounds offered by the grand narratives.

Although it is difficult to generalize about the strategies pursued, most have insisted on the “radical finitude” of metaphysical claims and an increased attention and valorization of what remains as unassimilated, excluded, and “other” in the formation of systems. In an ethical register, scholars have characterized this in terms of the recognition of the singularity or otherness of the other. In an aesthetic register, what is unassimilable has been figured as the unrepresentable or the sublime. In law, the unassimilable has been related both to an aboriginal disorder, violence, or injustice unmeasured by law, and to a justice yet to come.

The pragmatic response has been equally varied. Richard Rorty, for example, argued that living with postmodernity can best be sustained by an ironic sense of our commitment to the contingency of our beliefs and by expressing solidarity through paying attention to cruelty. For Lyotard, justice is itself an art of judging without the criteria of anthropology or prescriptions (knowledge, obligation, and community). Such judgment is ethical in the “honoring of the name” of the other and in bearing witness to the terror of living in the world. It is political in seeking an ungrounded practice of justice based on the recognition of the agonistic incommensurability of discourses. The maxim of formal justice—*audi alteram parte* (hear the other side)—becomes “recognize the absolute responsibility to the other.”

The attempt to displace the totalizing gestures of metaphysics has also been accompanied by the shaping of new conducts and forms of life in order to flourish in postmodern times. People treat the personae and roles of state modernity (the sovereign, the legislator, the judge, and the general) and those of public reason (the roles of the scientist and the public intellectual) with incredulity. Likewise, they challenge the status of the experts of technological rationality. In the more apocalyptic strains of postmodernism, the conducts of life are no longer attached to the law (order of being) and the subject is no longer instituted in terms of an enduring institutional substrate that links conscience, humanity, and history. In their place, conducts of life [p. 1160 ↓] are instantiated in relation to a variety of networks: desire, power, language, media images, and so forth.

Lyotard developed the persona of the pagan—the inhabitant of the border zone—to judge in a border zone of libidinal intensities rather than in the neutral space of the grand narratives. Gilles Deleuze (1925–1995) and Felix Guattari (1930–1992) have elaborated the figure of the nomad to negotiate the multiple planes and territories of existence with corporeal acts of flight and becoming. With extravagant melancholy, Baudrillard proposed a persona impelled by ecstatic mimicry, to seduce sign systems into revealing the history of the end of history. More pragmatic and less critical formulations of the personae of postmodernity would include the new universal subjects of the consumer and the victim, as well as the actor and activist in the global pluriverse.

Conclusion

In general, postmodernism, as a genre of thought, has not sought to function as a formal critique or as an alternative form of government, but rather to produce a series of counterpractices. The pagans, nomads, and seducers of postmodernism have remained in flight from state and law. More often, their role has been that of witness rather than that of judge or legislator. Whether the positions taken up by the postmodern personae can sustain a good life in the postmodern world, or whether such positioning collapses into a romantic quest for the redemption of the unity of feeling and action, remains open to dispute.

ShaunMcVeigh

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See also

- [Comparative Law](#)
- [Constitutive Criminology](#)
- [Deconstruction](#)
- [Derrida, Jacques](#)
- [Interpretation and Reasoning, Legal](#)
- [Language, Law and](#)
- [Pragmatism](#)
- [Semiotics](#)

Further Readings

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